IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

(1) S.B.Civil Misc. Appeal No.429/1999
Rajasthan State Industrial & Investment Corporation Ltd(RIICO) vs. Nahar Singh & anr.

(2) S.B.Civil Misc. Appeal No.430/1999
Rajasthan State Industrial & Investment Corporation Ltd(RIICO) vs. Naga & ors.

(3) S.B.Civil Misc. Appeal No.431/1999
Rajasthan State Industrial & Investment Corporation Ltd(RIICO) vs. Bada

(4) S.B.Civil Misc. Appeal No.432/1999

Rajasthan State Industrial & Investment Corporation Ltd(RIICO) vs. Bada & ors.

(5) S.B.Civil Misc. Appeal No.433/1999
Rajasthan State Industrial & Investment Corporation Ltd(RIICO) vs. Himta & anr.

(6) S.B.Civil Misc. Appeal No.434/1999
Rajasthan State Industrial & Investment Corporation Ltd(RIICO) vs. Maga

(7) S.B.Civil Misc. Appeal No.435/1999
Rajasthan State Industrial & Investment Corporation Ltd(RIICO) vs. Kewada & ors.

against the judgment and decree dated 11.5.1999 passed by the learned Civil Judge(Senior Division), Sirohi.

Date of Judgment: July 20, 2006.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Mr. Sanjeev Johri for the appellant.
Mr. L.R. Choudhary for the respondents.

BY THE COURT:

Heard learned counsel for the parties.

A short but only legal question involved in this appeal is that which should be taken to be the date for awarding the additional amount to the land owners under Section 23(1-A) of the Land Acquisition Act, 1894(for short "the Act of 1894").

Brief facts of the case are that the notification for acquiring the land was issued under Section 4(1) of the Act of 1894 on 20.6.1992. Before publication of the notification in official gazette on 27.8.1992, the notification was published in news paper on 27.6.1992. After publication of notification under Section 4(1) of the Act of 1894 on 27.8.1992 in gazette, the public notice was issued in two daily news papers, one in the month of September, 1992 and second on 24.12.1992. The award was passed on 30.9.1995. The sub-section (1-A) of Section 23 of the Act of 1894 provides as under:-

> "Sec.23(1-A)- In addition to the market-value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market-value for the period

> commencing on and from the date of the publication of the notification under Section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.
>
> Explanation.- In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any court shall be excluded.
>
> (2) In addition to the market-value of the land, as above provided, the Court shall in every case award a sum of thirty per centum on such market-value, in consideration of the compulsory nature of the acquisition."

The civil court by order dated 11.5.1999 held that the claimants are entitled to additional compensation which has been termed as interest by the civil court. The civil court in its order dated 11.5.1999 held that the claimants are entitled to additional amount u/s 23(1-A) from the date of publication of notification in gazette, that is from 27.8.1992. The contention of the appellant- Rajasthan State Industrial & Investment Corporation Ltd. is that the civil court committed error of law in awarding additional compensation from 27.8.1992. In fact, the additional compensation could have been awarded from 24.12.1992 which is the date of last notice published under Section 4(1) of the Act of 1894.

The learned counsel for the appellant submitted that which of the

date shall be the date of notification u/s 4(1) shall be given under Section 4(1) of the Act of 1894. Section 4(1) of the Act of 1894 itself specifically provides “the last of the dates of such publication and the giving of such public notice.....”, shall be the date of the publication of the notification under Section 4(1)” Therefore, the date of publication of notice cannot be prior to the last of dates of publication of notification under Section 4(1). It is submitted that it is not in dispute that last notification in this land acquisition proceedings, was published in news paper and that was on 24.12.1992. According to the learned counsel for the appellant, Section 23(1-A) also provides only that the court shall award additional amount as given in the said provisions for the period commencing on and from “the date of publication of notification under Section 4”. Therefore, the civil court committed error of law by awarding the additional amount u/s 23(1-A) from the date of notification published in gazette which is not the last published notice u/s 4(1) of the Act of 1894.Therefore, there cannot be two dates for publication of notification under Section 4, one for Section 23(1-A) and another for Section 6 of the same Act. The learned counsel for the appellant relied upon the judgment of the Hon'ble Apex Court delivered in the case of Eugenio Misquita and others vs. State of Goa and others ((1997) 8 SCC 47). According to the learned counsel for the appellant, Hon'ble the Apex Court made it clear that for counting period of one

year in between the publication of notification under Section 4(1) and Section 6 of the Act of 1894, the last date of notification/notice published under Section 4(1) alone can be taken as starting point and from that date, within period of one year, the notification under Section 6(1) can be published.

The learned counsel for the respondents submitted that Section 23(1-A) provides award of additional compensation and for that purpose, the period starts from the date of publication of notification under Section 4. It nowhere provides that the period will start from the last date of notification issued or published under Section 4(1) of the Act of 1894. It is also submitted that mentioning of the date of last publication of notification under Section 4(1) is for the purpose of computing period for specific purpose of completion of one stage of land acquisition proceeding. It is also submitted that final decision of the State Government takes shape with the publication of notification under Section 4(1) in the official gazette. Rest is substantially procedural matter and that requires no further decision of the State Government. The Section 4(1) provides for publication of the notice in the official gazette as well as publication of notice in two daily news papers circulated in the locality and also further provides giving notice to public, of the substance of such notification, to be given at convenient places in the locality. According to the learned counsel for the

respondents, the Hon'ble Apex Court in the case of Urban Improvement Trust, Udaipur v. Bheru Lal and others ((2002(7 SCC 712) held that publication of the notification under Section 4(1) of the Act of 1894 is a condition precedent for acquisition of the land.

The learned counsel for the respondents also relied upon the judgment of the Orissa High Court delivered in the case of Collector, Cuttack v. Smt. Jayasri Debi (AIR 1988 Orissa 163), wherein Hon'ble the Orissa High Court had occasion to consider the purpose for enacting Section 23. The Orissa High Court held that the provisions under Section 23(1-A) is to give benefit to the claimants who come within its scope and, therefore, liberal interpretation is to be given so that benefit is available to the claimants and not to restrict the same.

I considered the submissions of the learned counsel for the parties and perused the facts of the case as well as considered the judgments relied upon by the learned counsel for the parties.

It is clear from Section 4(1) of the Act of 1894 that this provides for publication of preliminary notification under the Land Acquisition Act so as to make the public aware that the Government has intention to acquire the land. This provides the procedure how to make the public know about the intention of the Government for acquiring the land. For this purpose, the notification is required to be published in the official gazette, in two daily news papers and substance of the notification is

required to be given at convenient places in the locality. There is a period of completion of the survey etc. before a final decision can be taken by the State Government under Section 6. The dispute came several times before the courts for computation of the period of one year between start of the proceedings under Section 4 and its completion by issuance of notification under Section 6 of the Act of 1894. In the year 1894, the words “the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification” have been inserted. Hon'ble the Apex Court, therefore, held that for the purpose of computation period under Section 6 with reference to the proceedings under Section 4, is to be computed from the last of the date of publication of the notification under Section 4(1). There is difference in the language of sub-section (1-A) of Section 23 which appears from its nature itself. Notification published in official gazette is final making up mind of the Government for its intention to acquire land. With the publication, a cloud comes over the rights of the claimants land owners. Whereas by treating last date of notification published u/s 4(1) as the date of notification u/s 4(1), benefit of maximum period is provided to Government to complete the land acquisition proceedings. The Section 23(1-A) is a provision by which the duty has been cast upon the court to award additional compensation to the claimants and for that purpose, it

is provided that the additional compensation should be for the period "commencing on and from the date of publication of the notification." This date must be certain date. This is beneficial provision of law. Hon'ble the Apex Court has held in the case of Urban Improvement Trust, Udaipur(supra) that final determination of the government, comes out from the gazette notification under section 4(1). In view of same reason, the date of publication of notification under Section 4(1) in official gazette is the date of decision of the Government to proceed with rest of the formalities which are to be completed by the Land Acquisition Officer. The publication of notification in the news paper may be delayed because of very reason of procedure but the restriction which can come into force upon the land which are involved in the acquisition proceedings starts with the publication of notification under Section 4 in the official gazette. Therefore, purpose for treating the last date of notification under Section 4(1) to be date of publication of notice under Section 4(1) of the Act of 1894 is for the purpose of computation of period within which the stages of land acquisition should be completed. Same date cannot be applied while computing the amount under Section 23(1-A) of the Act of 1894. As stated earlier, the object of incorporating the language as referred above and emphasis supplied in the date of publication of notice under Section 4(1) for the purpose of computing period of completion of procedure for issuance of

said notification under Section 6 is entirely different and to achieve its purpose. By applying same analogy, purpose and object of Section 23(1-A) cannot serve.

In view of the above, if the court below has awarded additional compensation under Section 23(1-A) from the date of the gazette notification, the court below has not committed any error of law, rather the court below has rightly calculated additional compensation from the date 27.8.1992.

In view of the above, these appeals are dismissed.

(**PRAKASH TATIA),J.**

mlt.